

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





74-2555

13  
PAS

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, :

Respondent, :

v. :

RICHARD C. PHILLIPS, :

Appellant. :

-----x

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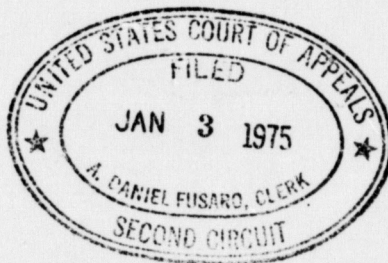
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APPENDIX FOR APPELLANT

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APPEAL FROM AMENDED JUDGMENT  
OF CONVICTION IN THE UNITED STATES  
DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK



GUSTAVE WEISS, ESQ.  
Attorney for Appellant  
1540 Broadway  
New York, New York 10036

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Docket Sheets

71 Cr. 678



# APPEAL

00  
CKET

A1  
**71CR 678**

**RAYFIEL, J.**

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Apptd by Court: G. Weiss
RICHARD C. PHILLIPS	1540 Broadway, NYC.
	JU6-2327
	<b>CLOSED</b>
	For Defendant: ABRAHAM-Nathan
	(appt by Mag Catoggio)
	16 Court St Bklyn TR5-292

Failure to make appropriate entries in firearm

ABSTRACT OF COSTS	AMOUNT	transactions				CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED				
Fine,									
Clerk,									
Marshal,									
Attorney,									
Commissioner's Court,									
Witnesses,									

DATE	PROCEEDINGS
6-17-71	Information and waiver of indictment filed.
6-17-71	Before TRAVIA, J.-Case called-Deft and counsel, Abraham Nathanson present Waiver of Indictment signed-Deft arraigned and after being advised of his rights by the court and on his own behalf enters plea of guilty as charged-Deft on O.R. and sentence adjd w/o date.
10-1-71	Before Rayfiel, J - Case called - Deft & counsel present - Deft sentenced to imprisonment for 3 years - pursuant to 18, U.S.C. Sec. 3651 - deft to serve 3 months and execution of remainder of sentence is suspended and deft is placed on probation for 33 months. Special conditions of probation are the deft is to continue to receive psychiatric treatment and that he refrain from any contact with guns.
10-1-71	Judgment and Commitment and Order of Probation filed - certified copies to Marshal and Probation

DATE	PROCEEDINGS
10-8-71	Voucher for Compensation filed
11-12-71	Before RAYFIEL, J - Case called on defts motion for reduction of sentence imposed. Granted as follows: the period of 3 months required to be served by deft is reduced to 2½ months; execution of remainder of sentence is suspended under 18:3651 and deft remain on probation for the remainder of such 3 yr period under special conditions as outlined in the original sentence imposed on Oct. 1, 1971.
11-21-71	Amended Judgment and Commitment and Order of Probation filed - Certified copies to Marshal and Probation.
4-5-74	Before RAYFIEL, J.- Case called- Deft and counsel Gustave Weiss present- Case adjd to 4-16-74 at 10:00 A.M.
5-16-74	Before RAYFIEL, J.- Case called-Deft and counsel Gustave Weiss present- Court finds that the deft had violated the conditions of probation and probation is revoked-Deft sentenced under T-18, U.S.C. Sec. 4208(b) for 3 months examinations in government institutions, to be sentenced after report from such institution
6-16-74	By RAYFIEL, J.- Violation of probation filed
6-3-74	Certified copy of violation of probation order ret'd and filed- copy delivered to Federal Detention Headquarters
10-10-74	Before RAYFIEL, J - case called - deft & counsel G.Weiss present- Deft sentenced to 3 years imprisonment pursuant to 18:4208(a)(2), defts counsel applied for release pending appeal. Application denied.
10-10-74	Amended Judgment & Commitment filed - certified copies to Marshal.
10/15/74	Voucher for compensation of counsel filed and Order appointing counsel Gustave Weiss, etc.
10-16-74	Notice of Appeal filed (no fee)
10-16-74	Docket entries and duplicate of Notice mailed to the C of A
10/30/74	Certified copy of Violation of probation order ret'd and filed- copies sent to Federal Detention Headquarters
11/7/74	Stenographer's transcript of Oct 10, 1974 filed.
11-20-74	Stenographers transcript dated May 16, 1974 filed ( PHILLIPS)
11/25/74	Voucher for expert services filed (transcription)



Report of Violation of Probation

March 11, 1974

PROBATION FORM 2  
(FEB. 63)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
TO THE HONORABLE LEO F. RAYFIELD  
UNITED STATES DISTRICT JUDGE  
REPORT ON PROBATION VIOLATION

RECEIVED  
U.S. DISTRICT COURT ED. NY  
NOV 22 1974

~~XXXXXXXXXXXXXXXXXXXX~~

Name	RICHARD CHARLES PHILLIPS	Citizenship	U.S. - Native
Address	10 East Drive Brentwood, New York	Marital Status	Separated
Age and Date of Birth	33 - 11/24/40	Number of Dependents	None
Sex	Male	Offense	VIOLATION OF PROBATION (Failure to Keep Records of Firearms Transactions)
Race		Defense Counsel	Mr. A. Nathanson

INFORMATION NO. 71-CR-678

PLEA: On June 17, 1971, waived indictment and pleaded guilty to one Count information before Judge Travia.

U.S. ATTORNEY: Mr. Edward Boyd

PENALTIES

Count 1 - Title 18, United States Code, Section 922 (m)  
Maximum - "\$5,000 or 5 years or both."

SENTENCE IMPOSED

Date of Sentence: October 1, 1971

Count 1 - Sentenced to three years pursuant to Section 3651; to serve three months, balance of sentence suspended and placed on 33 months probation. A Special Condition directs the defendant to continue to receive psychiatric treatment and refrain from any contact with guns. On November 12, 1971 this sentence was modified to the extent that the defendant serve 2-1/2 months under 3651 with the balance on probation and adherence to the before mentioned special conditions.



ORIGINAL OFFENSE:

Richard Charles Phillips was charged with Failing to Maintain Records While a Licensed Firearms Dealer.

SPECIFIC VIOLATION OF PROBATION:

The probationer failed to conform to the following conditions of probation as set forth in the form signed by him on October 1, 1971:

Condition (1) "You shall refrain from violation of any law (federal, state and local). You shall get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer."

Condition (5) "You shall notify your probation officer immediately of any change of your place of residence."

Condition (7) "You shall report to the probation officer as directed."

Special Condition: "Refrain from dealing, possessing, or controlling guns."

As regards Condition (1), an investigation disclosed that on February 18, 1973 the above-named probationer was arrested for Offering a False Instrument for Filing. According to the arresting officer, a complaint was filed on February 18, 1973 by the probationer's fiancée, Blanche Tambrino, charging that the probationer forged her name on a marriage certificate allegedly issued to them in the Town of Babylon on February 14, 1973. The probationer voluntarily appeared at the Police Station at which time he maintained that the complainant's signature was valid. This charge was dismissed in First District Court, Hauppauge, New York on April 26, 1973. It should be noted that the probationer failed to advise our office of this arrest.

The probationer also came into conflict with authorities

3.  
when he was issued a summons on March 15, 1973 for Harassment as a violation. According to official reports, a complaint was filed by Blanche Tambrino alleging that on March 15, 1973 at 1:45 p.m. on Wood Hill Road, Huntington, New York, the probationer, who was driving a black Ford, deliberately tailgated the complainant in an effort to have her stop her vehicle. The probationer pleaded guilty to this charge on December 19, 1973 and on that same date received a conditional discharge with a directive that he discontinue all contacts with the complainant. It should be noted that the probationer did not advise our office of the guilty plea or the conditional discharge until he was specifically questioned about the matter in our office on April 8, 1974. (It should also be noted that we received numerous telephone calls from the complainant during February, 1974 alleging the probationer is continuing to harass her. Specifically, she claims he is driving past or parking outside her house and follows her almost everywhere she goes.)

The probationer was arrested on a third occasion. Specifically, investigation disclosed that on April 24, 1973 at approximately eight o'clock p.m., Suffolk County Police attempted to stop a speeding car, later disclosed to have been driven by the probationer, who was the lone occupant in the vehicle. When the probationer refused to stop his vehicle, police gave pursuit but "lost the car" shortly after the probationer crossed into Nassau County. During the chase, the probationer's vehicle reached speeds approximating 100 miles an hour. While pursuing the vehicle, however, Suffolk County Police were able to record the vehicle's license plate number and forwarded this



information to Nassau County Police. A short time later, Nassau County Police spotted the vehicle at a gas station in Farmingdale, Long Island after the car had struck two other vehicles. Upon seeing the police car, the probationer attempted to flee on foot but was apprehended a short distance away. A search of the probationer's person disclosed two fully loaded revolvers, one a 38 caliber and the other a 45 caliber. The probationer was then arrested and charged with Possession of Dangerous Weapons, Leaving the Scene of an Accident, and Reckless Endangerment. It should be noted that when Suffolk County Police recorded the probationer's license plate number during the chase, they used this information to ascertain the probationer's name and address. They then proceeded to the given address on the premise that the probationer might have returned to his home. When they entered the probationer's apartment, they found a fully loaded nine millimeter automatic revolver along with a fully loaded nine millimeter magazine, both lying on top of a portable bar. However, due to various legal irregularities, no charges were filed in Suffolk County. On April 25, 1973 bail was set at \$10,000 and on April 27, 1973 the probationer was remanded and a mental examination was ordered. He was found able to stand trial but was committed to Hock State Hospital. On September 21, 1973 the probationer pleaded guilty to Attempted Reckless Endangerment as a Class E felony and sentencing was scheduled for November 30, 1973. Sentencing was adjourned on three successive occasions with the most recent sentence date being March 22, 1974.

As regards Condition (5), the probationer was discharged from Hock Hospital on January 8, 1974. We had to rely on other

sources to obtain the probationer's address.

As regards Condition (7), the probationer was discharged from Rock State Hospital on January 8, 1974 and failed to contact our office in any manner until receiving our letter of February 5, 1974. He then appeared in our office, as directed, on February 8, 1974.

As regards the Special Condition, when the probationer was arrested April 24, 1973, referred to earlier, he had on his person a 38 caliber and 45 caliber revolver, both fully loaded. In addition, a search of his residence, where he resided alone, disclosed a fully nine millimeter automatic revolver and a fully loaded nine millimeter magazine.

ADJUSTMENT UNDER SUPERVISION:

The probationer's adjustment under supervision has left much to be desired. When placed on probation he was residing in the maternal home which at the time was located at 110 Jean Road, West Islip. However, during October, 1972 he moved to 656-A Sunrise Highway, West Babylon. He remained at this address until April, 1973 when he was admitted to a succession of state hospitals for psychiatric treatment. He was discharged on January 8, 1974 and has since resided alone at 10 East Drive, Brentwood, New York.

Regarding employment, the probationer has relied primarily on Veterans' Administration Disability Compensation in order to subsist. He began receiving payments during November, 1970 in the amount of \$116. On June 11, 1973 his psychiatric disability rating was increased



to 100 per cent and since that time, he has been receiving an increased allotment of \$516 monthly. As supplementary income between June, 1970 and February, 1973, the probationer purchased new and used items which he sold at local flea markets averaging \$250 monthly in unclaimed income. However, it should be noted that postal authorities advised our office that during 1972 and 1973, the probationer used the mails to receive these goods which aggregated \$5,678 purchased from eight different companies. He used checks drawn on fraudulent accounts to purchase these goods. In addition, he also ordered \$1,315.98 in merchandise which he did not receive. It should also be noted that the Veterans' Administration is unaware of the probationer's earnings from the flea market. Since November 15, 1973 the probationer has been attending daytime classes at Skills Unlimited, Oakdale, New York which is a New York State Rehabilitation Program.

Since January 8, 1974 the probationer has not received psychiatric counseling because "my time has been taken up by my school work". Efforts were made by Hock Hospital personnel to arrange for the probationer to receive outpatient psychiatric treatment. The probationer's failure to cooperate could have serious repercussions since it is evident medical authorities feel that the probationer's condition warrants continued psychiatric treatment. Psychiatrist's diagnose the probationer as a sociopath who is unable to profit from past experiences. He is in no way psychotic. When consuming unprescribed amphetamines and barbiturates or drinking excessively, he is capable of reverting to criminal behavior. The probationer has demonstrated an irresponsible, immature, antisocial

7.

behavior throughout his period of supervision and it is felt he is unable to function appropriately in the community.

In view of the aforementioned circumstances we are bringing these matters to Your Honor's attention for whatever action you may deem necessary.

RESPECTFULLY SUBMITTED:

JAMES F. HARAN  
CHIEF U. S. PROBATION OFFICER

Prepared by: *James F. Haran*

Approved by: *Anthony J. Caputo*

jn:

March 11, 1974

NOTE: Complete details regarding the circumstances of the original offense and the probationer's background may be found in the presentence report originally submitted to Your Honor on October 1, 1971.



Excerpts from Hearing on Violation of Probation

October 10, 1974

(10, 11, 14-15, 16, 16-17, 18, 26, 28, 30-31, 35-36,  
40, 50, 55, 56, 62, 65-66, 68, 69)

Meyerson-direct

10

Q Does there appear a signature on this?

A Yes, there does.

Q Whose signature is that?

A Mr. Phillips, a probationer --

MR. WEISS: Objection that it's Mr. Phillips signature. I don't think Mr. Meyerson is qualified.

THE COURT: We have already the statement by the probationer that he signed the original conditions.

MR. WEISS: We have conceded that.

Q For the record, Mr. Meyerson, you stated this contains the standard conditions of probation. I direct your attention to Condition No. 1 as indicated on Government's Exhibit 2. I ask you to read it into the record.

A "You shall refrain from violation of any law, Federal, State and Local. You shall get in touch immediately with your probation officer if arrested or requested by a law enforcement officer."

MR. WEISS: If your Honor please, at this point I would object to any further testimony from Mr. Meyerson unless Mr. Levin-Epstein can adduce the time that Mr. Meyerson was assigned to be the probation officer for Mr. Phillips.

A April 2, 1973.



1  
2 Q Have you continued as Mr. Phillips' probation  
3 officer since that time?

4 A Yes, I have.

5 THE COURT: Was your answer yes?

6 THE WITNESS: Yes.

7 THE COURT: Go ahead.

8 Q Did there come a time during the course of  
9 your duties as Mr. Phillips' probation officer, where you  
10 made an investigation into certain allegations that had  
11 been made respecting Mr. Phillips?

12 A Yes, there were.

13 Q When did you make this investigation?

14 [ Q We were contacted on April 25, 1973 and  
15 advised that Mr. Phillips was arrested on the preceding date  
16 charged with possession of dangerous weapons, leaving the  
17 scene of an accident and reckless endangerment. ]

18 Q As a result of this investigation, did you  
19 reduce your determination or conclusion, if there were any  
20 to writing?

21 A Yes, I have a chronological entry here.

22 Q Did you also prepare a report for the Court  
23 as a result of this investigation?

24 A Yes, it's in the form of the violation of  
25 probation report.

Q I show you Government's Exhibit 1 for

1  
2 the record.

3 THE COURT: I will allow it.

4 A There is a Nassau County certified copy of the  
5 disposition on the arrest referred to April 28th, 1973.

6 Q Is that the arrest you refer to --

7 A Excuse me, April 24th, 1973.

8 Q Is that the arrest you referred to in your  
9 earlier testimony?

10 A Yes, it is.

11 Q Can you read for the record, Mr. Meyerson,  
12 what the certification is?

13 THE COURT: That is in evidence, is it not?

14 MR. LEVIN-EPSTEIN: Yes.

15 THE COURT: Proceed.

16 A "I certify that on June 20, 1973, the Grand  
17 Jury of Nassau County filed Indictment No. 37662 accusing  
18 Richard Phillips of the crimes -- "

19 [ Q I am directing your attention to the certi-  
20 fication, "On September 20, 1973, the defendant appeared  
21 before the Honorable Judge Young and was found guilty upon  
22 his plea of the crime of reckless endangerment in the first  
23 degree, a Class E felony in satisfaction of the indictment. On  
24 March 20, 1974, Richard Phillips appeared before the  
25 Honorable Judge Young for sentence, whereupon the Court



Meyerson-direct

15

1  
2 sentenced the defendant to probation, five years signed and  
3 certified by Harold McConnell, Clerk." ]

4 Q Is the certification dated, Mr. Meyerson?

5 A Yes, April 3, 1974.

6 THE COURT: Is that all referable to the  
7 Condition No. 1?

8 MR. LEVIN-EPSTEIN: Yes, it is.

9 THE COURT: Go ahead.

10 MR. LEVIN-EPSTEIN: Your Honor, at this time  
11 the Government has no further questions of this  
12 witness, as to conditions of violation of probation.

13 THE COURT: Any of the conditions? Does  
14 that include 5 and 7?

15 MR. LEVIN- EPSTEIN: Very well, your Honor.

16 BY MR. LEVIN-EPSTEIN:

17 Q Mr. Meyerson, I show you Government's Exhibit  
18 2 in evidence, once again and I ask you to read for the  
19 record, Condition numerated No. 5.

20 A "You shall notify your probation officer  
21 immediately of any change in your place of residence."

22 Q During the course of your investigation of the  
23 particular case, did you draw any conclusions as to the  
24 satisfaction of that condition.

25 A Yes

Meyerson-direct

16

1  
2 MR. WEISS: I object to that being conclusion  
3 rather than stating the facts and let the Court make  
4 the conclusion.

5 THE COURT: Yes, I agree.

6 [ Q Did you determine anything from your investi-  
7 gation as it relates to Condition No. 5?

8 A Yes, when I was assigned the case, I hadn't  
9 met Mr. Phillips because he was in custody at the time.  
10 He remained in State custody and as to the local charge  
11 in Nassau County, and was sent for study and observation to  
12 a local hospital, psychiatric Hospital. I still hadn't  
13 met Mr. Phillips until February, 1974, at this point he was  
14 discharged from the hospital, allegedly discharged from  
15 the hospital. I say allegedly because the hospital alerted  
16 us that since October of 1973, he had been leaving the  
17 hospital on leaves for more and more lengthy periods of  
18 time. ]

19 THE COURT: Was he under out-patient?

20 THE WITNESS: No, this was in-patient.

21 THE COURT: In-patient?

22 THE WITNESS: In-patient.

23 [ Q During that period of time, Mr. Meyerson, had  
24 Mr. Phillips notified you of his change of address?

25 A No, as I say, the first time I heard from him



Meyerson-direct

17

1  
2 was in February. It was only after efforts on my part to  
3 locate him that I did send him a letter and he responded.  
4 He had been officially discharged from the hospital during  
5 January of 1974.

6 Q So, for what period of time, Mr. Meyerson,  
7 during the course of Mr. Phillips' probation period had  
8 you not been in contact with him?

9 MR. WEISS: I object to the form of the  
10 question.

11 THE COURT: Sustained.

12 Q Based on your investigation -- withdrawn.

13 During the course of your standard practice  
14 as a probationary officer, how often do you come in contact  
15 with a probationer assigned to you?

16 MR. WEISS: Objection.

17 THE COURT: Sustained.

18 You are inquiring what Mr. Meyerson did  
19 with this probationer, not what the practice is.

20 MR. LEVIN-EPSTEIN: I was merely laying founda-  
21 tion, subsequent to connection, of course.

22 Q Prior to the time you have testified that  
23 you wrote to Mr. Phillips after his discharge from the hos-  
24 pital and he contacted you, when was the last time you  
25 spoke to him or had contact with him before that?

Meyerson-direct

18

1

2

A I had no contact with him prior to that time.

3

4

Q Is there anything in your files or records to indicate Mr. Phillips attempted to contact you?

5

A No, no, nothing.

6

7

Q Very well, Mr. Meyerson, you have testified Mr. Phillips was discharged from the hospital on January 8, 1974?

8

9

A Yes.

10

Q And you then wrote him a letter, you say?

11

A Yes.

12

Q When did he respond to that letter?

13

A The letter was sent on February 5th of 1974

14

and he responded February 7, 1974.

15

Q I direct your attention to Government's

16

Exhibit 2, in evidence. I ask you to read for the record the general condition of probation, marked No. 7?

17

18

MR. WEISS: If your Honor please, that's the letter that's already been in the record.

19

20

THE COURT: I will allow it.

21

MR. WEISS: Repetitive.

22

23

THE COURT: He's charged with having violated three general conditions and they're set forth in the report of Mr. Meyerson. We want some testimony as to whether there was a failure to comply with

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25



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MR. WEISS: I thought he did.

A Going back on the calendar, I can probably -- it would probably reflect what the regular reporting schedule was, what date of the month.

[ Q We are not interested in probability. When was he supposed to report, when was he directed to report, monthly, what date of the week, what date of the month?

A No response.

Q Do you know, sir?

A No, I don't. ]

Q You said you were advised on April 25, '73, that the defendant or probationer, I presume, had been charged with a crime, is that correct?

A Yes.

Q Who advised you?

A The probationer's mother.

Q I see. At that time on April 25th, was he in state custody?

A Yes, he was.

Q How long did he remain in state custody?

A My records reflect September 26th, when he appeared in court to plead guilty.

Q Of what year?

A Of '73.

1  
2 DIRECT EXAMINATION

3 BY MR. LEVIN-EPSTEIN:

4 Q What is your occupation, Mr. Esposito?

5 A Police officer, Nassau County.

6 Q Where is that?

7 A Nassau County.

8 Q How long so employed?

9 A Four years.

10 Q What is your present assignment?

11 A Assigned to radio patrol unit, 8th Precinct.

12 [ Q Patrolman Esposito, I direct your attention  
13 to April 24th of 1974 and ask you if you were working on  
14 that night?

15 A Yes, I was.

16 Q What capacity?

17 A As a radio patrol operator.

18 Q Were you on patrol?

19 A Yes, I was. ]

20 Q Did there come a time during the night of  
21 April 24, 1974, when you received a radio message communi-  
22 cation to your radio car?

23 MR. WEISS: Is that '74?

24 A Yes, I did.

25 Q As a result of that radio message, did you do



Esposito-direct

30

1  
2 I then proceeded behind the vehicle, pulled  
3 up as close as possible and verified that in fact the car  
4 was the one that had been broadcast on the radio notifica-  
5 tion. At that time I ordered the car to the curb.

6 Q What happened then?

7 A The subject operating the vehicle made an  
8 attempt to pull to the curb around some other vehicles on  
9 the roadway and then sped off at a high rate of speed.

10 Q Did you give pursuit in your radio car?

11 A Yes, sir, I did.

12 Q As a result of this pursuit, what happened?

13 A I pursued the vehicle for approximately ten  
14 and one half miles until it was involved in an auto acci-  
15 dent.

16 [ Q Approximately how fast would you say you had  
17 tp pursue the vehicle?

18 A The speed had approached 100 miles an hour.

19 THE COURT: Was the vehicle in your view during  
20 all this period?

21 THE WITNESS: Yes, sir.

22 THE COURT: Go ahead.

23 Q You said that the chase finally came to a  
24 stop when the subject vehicle that you were pursuing was  
25 involved in an automobile accident?

1

2

A Yes, sir.

3

Q What happened then?

4

A The vehicle then would up at the curb. I radioed my position to Headquarters for assistance. At that time the operator of the vehicle exited the vehicle and started to flee on foot.

8

Q Did he remain in your sight?

9

A Yes, he did.

10

Q Do you see that person in court today?

11

A Yes, sir, I do.

12

Q Would you please point him out.

13

A Right here (indicating).

14

THE COURT: Referring the man in the green jacket?

15

16

THE WITNESS: Yes, sir.

17

THE COURT: Indicating the probationer.

18

Q Then what happened?

19

A I then pursued the subject on foot to the rear of the gas station at Merritts Road and Hempstead Turnpike in Farmingdale, then pursued the subject to the rear of that gas station where I apprehended him. ]

20

21

22

23

Q When apprehending him, what happened then?

24

A I then held the defendant against an automobile until assistance arrived and we then handcuffed the

25



Esposito-direct

35

1  
2 MR. LEVIN-EPSTEIN: The case itself as of  
3 this moment.

4 THE COURT: I assume we are expecting to hear  
5 testimony respecting its contents.

6 MR. LEVIN-EPSTEIN: That's correct, your  
7 Honor.

8 MR. WEISS: All right, with that understanding.

9 THE CLERK: Government's Exhibit 4 now in  
10 evidence.

11 (So marked)

12 BY MR. LEVIN-EPSTEIN:

13 [Q Patrolman Esposito, upon searching the car  
14 and finding Government's Exhibit 4 in evidence, did you  
15 open Government's Exhibit 4?

16 A Yes, sir, I did.

17 Q Did you find anything inside Government  
18 Exhibit 4?

19 A Yes, sir, I did.

20 Q What did you find inside Government Exhibit  
21 4?

22 A I found weapons holsters --

23 THE COURT: Weapons holster, is that what  
24 you said?

25 THE WITNESS: Weapons holsters. There was

Esposito-direct

36

1  
2 one holster and other leather straps for a holster. I also  
3 found a disassembled weapon and spare ammunition in the  
4 form of clips for a 45 caliber automatic weapon. Also, in  
5 the briefcase was a 45 caliber automatic.

6 THE COURT: Were they in that case marked  
7 Exhibit 4?

8 THE WITNESS: Yes, they were. ]

9 MR. LEVIN-EPSTEIN: To be marked for identi-  
10 fication, your Honor.

11 THE COURT: Mr. Esposito referred to certain  
12 weapons by their names.

13 MR. LEVIN-EPSTEIN: They will be further iden-  
14 tified, your Honor.

15 THE CLERK Government's Exhibit 5 and 6  
16 marked for identification, handguns.

17 (So marked)

18 THE COURT: I assume they are marked for  
19 identification?

20 MR. LEVIN-EPSTEIN: That's correct, your  
21 Honor.

22 BY MR. LEVIN-EPSTEIN:

23 Q I show you Government's Exhibit 5 marked for  
24 identification, Patrolman Esposito and Government's Exhibit  
25 6, can you identify these two objects?



1  
2 BY MR. LEVIN-EPSTEIN:

3 Q Patrolman Esposito, referring to Government's  
4 Exhibit 6 now marked for identification, can you identify  
5 this with greater accuracy?

6 A Yes, sir,, it's part of a disassembled gun.]

7 MR. LEVIN-EPSTEIN: Thank you.

8 Marked for evidence, your Honor.

9 THE COURT: Yes.

10 THE CLERK: Government's Exhibits 5 and 6  
11 now in evidence.

12 (So marked)

13 MR. LEVIN-EPSTEIN: Play the remaining contents  
14 of the case --

15 THE COURT: If there are in the condition  
16 that they were at the time that Mr. Esposito found  
17 them, yes.

18 MR. LEVIN-EPSTEIN: I will show that founda-  
19 tion. For purpose of clarity and convenience, per-  
20 haps the entire contents of Government's Exhibit 4  
21 at this time to be marked Government's Exhibit 7  
22 for identification in totallity.

23 THE COURT: Did you make a list of the con-  
24 tents of that when the bag was opened?

25 THE WITNESS: The list --

6 Esposito - direct

THE WITNESS: By me, sir, in my police vehicle.

BY MR. LEVIN-EPSTEIN:

Q Was there anyone else in the car besides yourself and Mr. Phillips?

A Another officer.

Q After transporting Mr. Phillips to the police station in Levittown, what happened?

A Mr. Phillips was then brought into the stationhouse and completely searched at the stationhouse.

Q Was anything found in that search?

A No, not on the search of Mr. Phillips.

Q Did there come a time when you searched the radio car in which Mr. Phillips had been transported?

A Yes, sir, there was.

Q Did there come a time when you found anything as a result of that search?

A Yes, sir, upon lifting the back seat of the automobile, I found a loaded .38 caliber revolver.

Q Loaded?

A Yes.

MR. LEVIN-EPSTEIN: May this .38 caliber revolver be marked as a Government exhibit for identification?

THE COURT: Yes.



Esposito - cross

55

gasoline station where you apprehended him; is that correct?

A Yes.

Q What did you do when you apprehended him; is that correct?

A Yes.

Q What did you do when you apprehended him, how did you apprehend him?

A I yelled to him to halt, police. He turned around and he put his hands up in the air.

Q Then what did you physically do to Mr. Phillips?

A I told him to put his hands on the top of a vehicle. I held him there physically in order to restrain him until assistance arrived.

Q Assistance came?

A Yes.

Q Did you pat him down?

A He was patted down then at the scene.

Q While you were holding him, while spread-eagled over the car?

A Being held at the time.

Q Mr. Esposito, it's a very simple question.

When you had him -- was the hood of a car?

A Yes, sir, he was leaning against the side of a vehicle.

Esposito - cross

56

1  
2 [Q When you had him against the roof of the car and  
3 you had one hand on him, did you pat him down for a weapon  
4 at that time?

5 A Yes, I did.

6 Q Did you find a weapon?

7 A No, sir, I did not.

8 Q Then assistance came; is that correct?

9 A Assistance was there at the time.

10 Q When you found no weapon, you then handcuffed  
11 him; is that correct?

12 A Yes, sir.

13 Q Behind the back or front?

14 A Behind his back.

15 Q You put him in your patrol car?

16 A Yes, sir.

17 Q A four-door or two-door?

18 A Four door.

19 Q Is there a partition separating the back of  
20 the car from the front?

21 A No, sir, there is not.

22 Q it's a sedan, is it not?

23 A Yes.

24 Q You then transported him to Levittown; is that  
25 correct?

A Yes, sir. ]



Esposito - cross

62

1  
2 where you found that?

3 A Yes, sir, I did.

4 Q Where did you find it?

5 A Under the rear seat of my radio motor patrol  
6 unit.

7 [Q I'm asking you about when you handcuffed the  
8 probationer, did you handcuff him in the rear or front. I  
9 don't recall.

10 A Handcuffed him in the rear.

11 Q And -- you placed him in the car; is that correct?

12 A Yes, along with my assisting officer.

13 Q He was under observation at all times?

14 A Yes, sir.

15 Q Did either you or your assisting officer see  
16 him remove that gun?

17 A I did not. I don't know if the officer did not  
18 see him remove the gun.

19 Q In other words, you don't know whether or  
20 not the gun came from Mr. Phillips, do you?

21 A At that time I could not determine, no. ]

22 Q Officer, did you ever testify in the Nassau  
23 County Court that this .45 was found in a canvas bag?

24 Q No, sir, I did not. I did not testify in  
25 Nassau County Court.

Phillips - direct

65

## DIRECT EXAMINATION

BY MR. WEISS:

Q Mr. Phillips, on April 24, 1973, were you apprehended by Officer Esposito?

A Yes, I was.

Q At that time were you operating a motor vehicle?

A Yes, I was.

Q Whose vehicle?

A Mine.

Q That time, did you have any guns or parts of guns in your possession or in the car with you?

A No, I did not.

Q Since October 1, 1971, the date that you were sentenced in this Court, have you had in your possession at any time any guns, firearms, parts of firearms or ammunition?

A I have found a couple of parts after I moved. I threw them away, small parts, like pins and things like that.

Q Firing pins?

A Pins.

Q Could you have assembled a whole operating --

A No way.

Q A complete operating firearm from the parts that you disposed of?



Phillips - direct

66

1  
2 A No.

3 MR. WEISS: No further questions.]

4 CROSS-EXAMINATION

5 BY MR. LEVIN-EPSTEIN:

6 Q Mr. Phillips, is this your case?

7 A I had one like it. I don't know if that's the  
8 particular one I had.

9 Q I'll show it, Government's Exhibit 4.

10 Is that your name appearing on it?

11 A Yes.

12 Q Is this the case that resembles the one you had  
13 at that time?

14 A I had one similar to this.

15 Q Did you hear the testimony of Officer Esposito  
16 when he said he found this case in your car with the guns  
17 and the ammunition inside?

18 A I heard it.

19 Q Is he lying?

20 A Yes.

21 Q He's lying. Have you ever seen Patrolman Esposito  
22 before?

23 A Only on the arresting date.

24 Q Any reason that you can think of why he would  
25 lie?

1 THE COURT: I'm going to recess for about 15  
2 or 20 minutes, prepare a memo, following which I'll  
3 return to the Courtroom.

4 MR. LEVIN-EPSTEIN: If it please the Court, I  
5 would like to collect the weapons and evidence and  
6 return them to the custody of Officer Epstein.

7 MR. WEISS: I have no objection to that, your  
8 Honor. They served their purpose.

9 THE COURT: Yes, that includes Mr. Meyerson  
10 who is excused, if he has anything else to keep him  
11 occupied.

12 MR. LEVIN-EPSTEIN: Fine, your Honor.

13 (Recess taken.)

14 (After recess.)

15 MR. WEISS: If your Honor please, just one  
16 point I omitted -- maybe I ought to put him on the  
17 stand.

18 MR. LEVIN-EPSTEIN: I'll stipulate.

19 [ MR. WEISS: Mr. Levin-Epstein will stipulate  
20 Mr. Phillips is receiving psychiatric treatment in  
21 Babylon, one of the terms of probation.

22 THE COURT: That's, I take it, on a voluntary  
23 basis.

24 MR. WEISS: Yes, sir. ]

25 THE COURT: He's been on that kind of treatment,



1 both in-patient as well as out-patient, on previous  
2 occasions.

3 THE DEFENDANT: On this case it's voluntary.

4 MR. WEISS: He's currently under psychiatric care,  
5 one of the special terms of his parole.

6 THE COURT: On the basis of the evidence adduced  
7 at the hearing, it is my considered opinion, and I  
8 accordingly find the Government has sustained its  
9 burden of proving that Mr. Phillips, the petitioner  
10 herein, violated each of the three general conditions  
11 of his probation, as well as the far more important  
12 and serious special condition; that he refrain from  
13 possessing or controlling guns.]

14 Because of the seriousness of the violation of  
15 the special condition -- I should say particularly be-  
16 cause of that -- I have no alternative but to revoke  
17 his probation.

18 Before making any final disposition of it,  
19 having revoked the probation, I want to give you,  
20 Mr. Weiss, an opportunity for elocution following which  
21 I shall give Mr. Phillips an opportunity to make  
22 any statement in his own behalf.

23 I call upon you now to make such statement, as  
24 you wish to make for him.

25 MR. WEISS: If your Honor please, I specifically

Sentence

October 10, 1974



W

1  
2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 - - - - - x

5 UNITED STATES OF AMERICA, :

6 - against - : 71-CR-678

7 RICHARD C. PHILLIPS, :

8 Defendant. :

9 - - - - - x

10 United States Courthouse  
11 Brooklyn, New York

12 October 10, 1974  
13 2:30 o'clock a.m.

14 B e f o r e:

15 HONORABLE LEO F. RAYFIEL, U.S.D.J.

16 (In Chambers)  
17  
18  
19  
20  
21  
22

23 EMMANUEL KARR I hereby certify that the foregoing  
24 OFFICIAL COURT REPORTER accurate transcript from my st  
25 ographic notes in this proceeding.

Official Court Reporter  
U.S. District Court

## A p p e a r a n c e s :

DAVID G. TRAGER, ESQ.  
United States Attorney  
for the Eastern District of New York

BY: ETHAN A. LEVIN-EPSTEIN, ESQ.  
Assistant United States Attorney

GUSTAVE WEISS, ESQ.,  
Attorney for Defendant.

- - -



1 THE COURT: Are we ready to proceed now?

2 MR. WEISS: I think so, your Honor.

3 THE COURT: Quite a long period of time has  
4 elapsed since the proceedings in this case were com-  
5 menced and it might not be inadvisable for me to make  
6 some brief statement as to the history of this matter.

7 In June of 1961, you, Mr. Phillips waived the  
8 right to have the proceedings presented to a Grand  
9 Jury --

10 MR. LEVIN-EPSTEIN: Your Honor, pardon me, I  
11 think that was in 1971, you said 1961.

12 THE COURT: 1961, 1961 is another significant  
13 date, but this was 1971.

14 You then pleaded guilty to an information charg-  
15 ing you with violation of 922 subdivision (n) of  
16 title 18 of the Code, because you then were a dealer  
17 in firearms licensed by the Government and you failed  
18 to keep proper records of the receipt and disposition  
19 and sale of the articles which you were licensed to  
20 deal in.

21 In October of '71, I sentenced you under Section  
22 3651 of Title 18 of the Code, the so-called split-  
23 sentence section, to a period of three years --

24 THE DEFENDANT: Yes, sir.

25 THE COURT: (Continuing) -- and it was provided

1 that you be required to serve only three months of  
2 that sentence and I put you on probation for the re-  
3 maining thirty-three months with the usual conditions  
4 of probation and with two special conditions of pro-  
5 bation:

6 One was that you commence and continue under  
7 the supervision of the Probation Department of this  
8 Court psychiatric examinations and study as you had  
9 from time to time earlier than that;

10 The second special condition was that you steer  
11 clear of firearms.

12 About a month thereafter I reduced the time to  
13 be served provision in the sentence to the extent of  
14 two weeks, and that was at your mother's request that  
15 she would like to have you with her on Christmas day.

16 On March 11, 1974, the Probation Department filed  
17 its report in this case charging you with having vio-  
18 lated conditions one, five and seven of the general  
19 conditions of the probation and those two special con-  
20 ditions which I have referred to.

21 We had a hearing on that matter, and at the con-  
22 clusion of the hearing I found that the Probation De-  
23 partment, the Government, had sustained its charges  
24 and I revoked your probation.

25 Under normal conditions I would have probably



1 sentenced you at that time but because of the fact that  
2 your presentence report contained a very lengthy his-  
3 tory of troubles and problems that you had with re-  
4 spect to matters involving your emotional disturbances  
5 and other similar things, and I felt it advisable in  
6 order to acquire a more substantial amount of knowledge  
7 to assist me in the imposition of sentence in this  
8 case, so I submitted you to the custody of the Attor-  
9 ney General to be confined in an institution for a  
10 study of your case, psychiatrically and psychologically  
11 and physically, and to report to the Court as to what  
12 his findings were and any recommendations that the  
13 Director of Prisons might choose to make.

14 I have received that report, I have considered  
15 it, of course, and I am prepared now to proceed with  
16 the sentence.

17 However, I want to give you, Mr. Weiss, an  
18 opportunity, of course, to make any statement you wish  
19 to make in behalf of Mr. Phillips and present any miti-  
20 gating factors that you think are relevant for the  
21 Court's consideration.

22 MR. WEISS: Thank you, your Honor.

23 Your Honor, I have had the opportunity to read  
24 the report that was submitted you and that you made  
25 reference to, and I think it is manifestly clear to

1 all of us that it is not a guiding virtue of parole  
2 supervision that it can weigh a situation where there  
3 is a violation of parole which is in intertwined with  
4 emotional disturbances, questions of free will or  
5 inability to act emotionally stable or maturely.

6 I noticed, incidentally, that the psychiatric  
7 report, the report that you referred to, recommends  
8 that he receive psychiatric treatment and vocational  
9 training.

10 You may recall that I submitted or forwarded  
11 to your Honor a letter --

12 THE COURT: Are you referring to Mr. Murphy's  
13 letter?

14 MR. WEISS: Yes, Mr. Murphy's letter, and I  
15 think it is rather a significant letter, and I don't  
16 know whether you want me to read it into the record,  
17 your Honor, because it says that he had been making  
18 significant progress both vocationally and socially  
19 while he was involved in this program with the Office  
20 of Vocational Rehabilitation of the Department of Edu-  
21 cation of the State of New York, and I think that that  
22 is a very important letter, especially the recommenda-  
23 tion of Mr. Murphy that Mr. Phillips be continued in  
24 that program.

25 Your Honor, if we had in a sense a person who



1 is, let us say, a bank robber or who was guilty of  
2 really anti-social behavior in the sense of robbing  
3 ~~and assaulting~~ <sup>assaulting</sup> and so-on, without any emotional problem,  
4 I wouldn't be wasting my time speaking to your Honor  
5 at this point tthat is if he violated his parole.

6 What I suggest the problem we have here is  
7 what are we going to do with Mr. Phillips as far as  
8 he is concerned, as far as the Government is concern-  
9 ed, and as far as society is concerned, and I question  
10 sincerely whether the overall benefit to everyone in-  
11 volved would require any sort of incarceration except  
12 perhaps to be parolled to Mr. Murphy's program for --

13 THE COURT: He is an official of the State  
14 Courts?

15 MR. WEISS: Sir?

16 THE COURT: I say is he an officer of the State  
17 Courts?

18 MR. WEISS: No, not the State Courts, he is  
19 a part of the New York State Educational Department.

20 I don't know whether your Honor has the letter  
21 handy.

22 THE COURT: I have the letter, I have the letter,  
23 and he is styled a counsellor, and whether it is the  
24 Court system or the Educational Department system,  
25 he is apparently one who was selected to advise and

1 consult with Mr. Phillips and who suggests the kind  
2 of treatment which they hoped would help him in solving  
3 his emotional problems.

4 MR. WEISS: I would assume that Mr. Murphy is  
5 qualified educationally to make a proper evaluation.

6 What is significant to me is that the letter  
7 was concurrent with and about the time, that is the  
8 evaluation of Mr. Philips, that was current with the  
9 time of the probation violation hearing, if you re-  
10 call, because at that time Mr. Phillips was involved  
11 in this training program under the supervision of  
12 New York State Department of Education, that was a  
13 concurrent situation, the evaluation of Mr. Murphy was  
14 a concurrent one with the hearing on the parole viola-  
15 tion.

16 THE COURT: Wasn't that as the result of con-  
17 duct which came before the Court's, the State Courts  
18 on other occasions.

19 MR. WEISS: I am not aware of it, I cannot say  
20 officially for the record that I know, but the point  
21 was he was there and undergoing a particular program,  
22 and whether it was a State Court or a Federal Court,  
23 I think is really for purposes here immaterial be-  
24 cause he was under supervision at that point.

25 It is significant to note that Mr. Murphy said



1 at that time, which was subsequent to the alleged  
2 violations of parole, that he was making, in his  
3 words, a "significant progress both vocationally and  
4 socially."

5 Do you see that in the second paragraph?

6 He says he was pulled suddenly, he was pulled  
7 from our program and sent for psychological evaluation  
8 by Court action, and it is Mr. Murphy's opinion that  
9 if he were brought back into the program perhaps we  
10 can salvage Mr. Phillips.

11 Now, I think that is the overriding considera-  
12 tion at this time, can we salvage him, can we make an  
13 emotionally mature citizen out of him, can he gain  
14 full citizenship, and it is Mr. Murphy's knowledgeable  
15 guess that he can be, and I commend that for your  
16 Honor's consideration.

17 THE COURT: Mr. Phillips, I want to give you an  
18 opportunity to make any statement you choose to make in  
19 your own behalf.

20 Is there anything you wish to say to the Court?

21 THE DEFENDANT: I was happy to see Mr. Murphy  
22 took time to write the letter. I think since I went,  
23 and I think I mentioned this in Court, since I went  
24 into psychological under Dr. Behole and subsequent to  
25 Mr. Murphy, I have never felt better in my life under

1           these two men helping me overcome certain difficulties  
2           that I have had.

3           THE COURT: You have been in and out of State  
4           institutions on a number of occasions, and you had  
5           also taken in-patient treatment. Now something ef-  
6           fective might have been done to help you overcome your  
7           psychiatric and psychological condition but you failed  
8           to continue, on many, many occasions you were in a  
9           number of institutions between April of 1973, and  
10          some three or four months ago, in 1974, and you kept  
11          going into institutions at that time and out of them --

12          THE DEFENDANT: Your Honor, I stayed in two in-  
13          stitutions five and six a months a piece, I was in  
14          Hook's psychiatric from August -- I was there one week  
15          then I went back in from August to January, I believe  
16          it was the last week of August, they took me over there,  
17          I was there until January 8th.

18          THE COURT: I have some brief notes that were  
19          culled from the pre-sentence report, and that is a  
20          very, very extensive report and a very illuminating  
21          report, and also from the testimony that was adduced  
22          at the hearing that we held in your case, showing that  
23          you had been guilty on a number of occasions of bizarre  
24          conduct, which of course I cannot categorize profes-  
25          sionally because I lac the skills in it, but which the



1 authorities believe was conduct which required psy-  
2 chological and psychiatric treatment.

3 THE DEFENDANT: What bizarre conduct was I  
4 found guilty of?

5 THE COURT: FOR instance, there was an incident  
6 that occurred when you were being chased by the police  
7 authorities when you were in an automobile crossing  
8 county lines that was -- well, nothing is to be gained  
9 by my repeating this, but from what is contained in  
10 the pre-sentence report some of your acts require pro-  
11 fessional attention.

12 You have had several periods of psychiatric  
13 maladjustment which commenced in 1961 at the time you  
14 were in the Service, and other occasions thereafter,  
15 and as recently as the dates I referred to earlier,  
16 between April 1973, and January, '74, you were admitted  
17 to a number of State hospitals for psychiatric study  
18 and you were placed on out-patient treatment which  
19 was entirely ineffective.

20 It possibly could have been more effective if  
21 you had followed the instructions that were given to  
22 you, but you didn't, and you failed to follow-up the  
23 treatment which was designed to help you solve your  
24 own problems.

25 Instead you would take unprescribed amphetamines

1 or barbiturates and overindulged in alcohol.

2 It is apparent to the authorities, and I am now  
3 referring to the authorities who conducted the study,  
4 that you are subject to emotional impulses which you  
5 appear to be unable to control.

6 What makes your case more difficult is the  
7 fact that you have the predilection for guns. And in  
8 the light of some of the acts that you have committed  
9 during the course of time and which are contained,  
10 incidentally, in the pre-sentence report, you have had  
11 a tendency to be assaultive, and you admitted that to  
12 the probation department, so that the possession of  
13 guns makes your case a more difficult one.

14 Now you have been confined for some time.

15 The original sentence I imposed was qualified  
16 by making it a split sentence.

17 I am going to commit you to the custody of the  
18 Attorney General or his authorized representative to  
19 be confined in an institution --

T2 fls

20 (Continued on next page.)  
21  
22  
23  
24  
25



EK:MM  
T2

1 (At this point the mother of the defendant  
2 exclaimed:

3 No, please don't, your H onor.)

4 THE COURT: Please refrain now.

5 THE MOTHER: Why, why?

6 THE COURT: (Continuing) -- to be confined in  
7 an institution to be selected by him for a period of  
8 three years.

9 THE MOTHER: No, No, please, please don't.

10 THE COURT: We will have to ask you to leave the  
11 room.

12 For a period of three years.

13 Now you will be entitled to credit, as the law  
14 provides, for all the time that you have been in custody  
15 in connection with this matter.

16 Now I don't know whether you were confined in  
17 lieu of bail, I doubt it, but you were confined for the  
18 period of this study and you were also confined since  
19 the conclusion of that study.

20 You will be entitled to credit for that time.

21 I'm going to impose a sentence under section  
22 4208(a) (2) which gives the parole board the right,  
23 which it would not otherwise have, to grant you parole  
24 at any time during the course of the sentence.

25 If they exercise that right favorably to you,

1 your sentence imposed as of three years now will be  
2 reduced to the extent of the time you will have been  
3 served, at the time they exercise that right.

4 MR. WEISS: Does he get credit for the three  
5 months approximately served originally on his original  
6 sentence?

7 THE COURT: He will be entitled to credit and I  
8 think that is one of the provisions of 3653, with  
9 which I'm sure you are familiar, for any time that he  
10 has been confined --

11 MR. WEISS: I was aware, your Honor, --

12 THE COURT: (Continuing) -- in connection with  
13 this case.

14 MR. WEISS: I was aware, but, your Honor, I  
15 just want it to be stated for the record and so that  
16 Mr. Phillips will know it.

17 THE COURT: I am not calculating the amount  
18 but that can be determined very easily.

19 MR. LEVIN-EPSTEIN: The Board of Parole will  
20 calculate that during the course of the processing  
21 of the defendant.

22 THE COURT: That is my disposition of the matter.

23 MR. WEISS: If your Honor please, I think, I  
24 believe that Mr. Phillips had a right to appeal his  
25 conviction under this violation of parole.



1 I am only obligated on his behalf to file a  
2 notice of appeal.

3 THE COURT: Yes.

4 MR. WEISS: Pending the determination in that  
5 appeal, would your Honor parole Mr. Phillips until the  
6 determination of the appeal?

7 THE COURT: Does the Government have to say any-  
8 thing with respect to that?

9 MR. LEVIN-EPSTEIN: Your Honor, I believe dur-  
10 ing the course of your remarks prefatory to the dis-  
11 position of the sentence, the Court had summarized  
12 substantially what the evaluation and recommendation  
13 of the authorities at Lewisburg were.

14 In respect of your request, the Government would  
15 not add anything further factually to that, but the  
16 Government would consider rather, or would request  
17 rather that the Court in consideration of this evalua-  
18 tion not consider a release pending appeal but rather  
19 order a remand of this defendant.

20 MR. WEISS: May I add something to that, Judge,  
21 on condition that he go under the program with Mr.  
22 Murphy.

23 THE COURT: Under what?

24 MR. WEISS: That he stay under Mr. Murphy, with  
25 Mr. Murphy.

1 THE COURT: Oh, no.

2 I shall append to the commitment in the case  
3 as just passed upon, a copy, a Xerox copy of the letter  
4 which you sent to me and the one received from Mr.  
5 Murphy.

6 IT may be that the Federal authorities may com-  
7 municate with Mr. Murphy for purposes of ascertaining  
8 what program he conducted which he though was helpful  
9 to Mr. Phillips.

10 I certainly shall do that.

11 MR. WEISS: Yes, sir.

12 THE COURT: It is rather an unusual thing but  
13 I certainly shall do it, it may help him.

14 I don't think I don't think in light of all that  
15 I have said about his general conduct over the years  
16 and his predilection for guns and the other facts and  
17 factors, which I am quite sure you are familiar with,  
18 Mr. Weiss, that I ought to grant him a stay of the execu-  
19 tion of this sentence.

20 I think I should remand him.

21 If you conduct your appeal --

22 MR. WEISS: Diligently --

23 THE COURT: -- diligently --

24 MR. WEISS: It will be conducted diligently.

25 THE COURT: Then that is all.



1 MR. LEVIN-EPSTEIN: Thank you, your Honor.

2 MR. WEISS: May he have a visit with his  
3 mother?

4 THE COURT: Oh, sure, under appropriate super-  
5 vision.

END

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Order of Violation of Probation

October 10, 1974



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

A49

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D. N.Y.

OCT 10 1974

TIME A.M. ....  
P.M. ....

-----  
THE UNITED STATES OF AMERICA

VS

RICHARD C. PHILLIPS  
-----

VIOLATION OF PROBATION

71 CR 678

FILED

WHEREAS, on June 17, 1971, the defendant, RICHARD C. PHILLIPS, pleaded guilty to the violation of T-18, U.S.C. Sec. 922(m), and on October 1, 1971 the defendant was sentenced to imprisonment for a period of 3 years, pursuant to T-18, U.S.C. Sec. 3651, the defendant was to serve 3 months and execution of the remainder of the sentence was suspended and the defendant was placed on probation for a period of 33 months, and

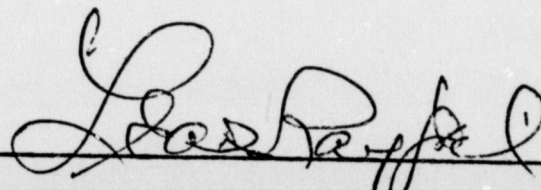
On November 12, 1971, the defendant's sentence was reduced as follows: The period of 3 months required to be served by the defendant is reduced to 2½ months, and execution of the remainder of the sentence was suspended under T-18, U.S.C. Sec. 3651, and the defendant was to remain on probation for the remainder of such 3 year period, and

The defendant having appeared in the U.S. District Court for the Eastern District of New York, on May 16, 1974, on a charge of violation of conditions of probation, probation was revoked and the defendant was sentenced pursuant to T-18, U.S.C. Sec. 4208(b) for a 3 month examination in a government institution, to be sentenced after a report from such institution, and

The defendant having appeared for sentencing on October 10, 1974, with counsel, Gustave Weiss, Esq. the defendant is sentenced to imprisonment for a period of 3 years pursuant to T-18, U.S.C. Sec. 4208 (a)(2).

IT IS FURTHER ORDERED that the Clerk deliver certified copies of this Order to the U.S. Marshal and the Probation Officer for the Eastern District of New York.

DATED: Brooklyn, New York  
October 10, 1974

  
UNITED STATES DISTRICT JUDGE





RECEIVED  
U. S. ATTORNEY

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EAST. DIST. N.Y.

*[Handwritten signature]*